

WATER LINES

NEWS FROM THE WATER RESOURCES DIVISION
OF THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

DEPARTMENT NEWS

The Jefferson River Watershed Council: Help for the "Forgotten Fork"

By Dave Amman

The Jefferson River is one of Montana's most overlooked river resources. Unlike its upstream neighbors, the Jefferson doesn't get much attention from the anglers that crowd the Beaverhead, Ruby, and Big Hole rivers, which meet to form the Jefferson near Twin Bridges. Farther downstream at Trident, the Madison and Gallatin rivers join the Jefferson to form the Missouri River. In the company of these legendary trout streams, the Jefferson has been referred to as the "Forgotten Fork."

However, this may be slowly changing. In June 1999, a group of concerned citizens, sportsmen, irrigators, members of conservation organizations, and agency personnel met in Twin Bridges to discuss the formation of a watershed group that would examine and address the issues that have kept this river from reaching its potential. The group, now named the Jefferson River Watershed Council (JRWC), met a few more times last summer, and since October 1999 has held meetings on the fourth Wednesday of every month. Several government agencies, such as the NRCS,



Jefferson River - Photo by Dave Amman

DFWP, MSU Ag-Extension, DEQ, and DNRC, are involved as technical advisors.

The JRWC has chosen to focus attention on the river from Twin Bridges downstream to just past the Waterloo Bridge. This river reach experiences the most frequent and severe dewatering and associated thermal problems. Concerning fisheries, the DFWP estimates that the optimal low flow near the Waterloo Bridge is about 1,000 cfs. But in 1994, flows dropped to less than 20 cfs,

and fish populations plummeted for the next several years. According to DFWP Fisheries Biologist Ron Spoon, populations are beginning to stabilize, due in large part to three years of favorable flows. Currently, however, river flows are very similar to the crippling 1994 conditions.

The possibility of drought conditions this summer became

apparent early this year, when snowpack data revealed below-average snow water equivalent. So, for its first project, the JRWC chose to create a Drought Management Plan. The plan is patterned after the Big Hole Watershed Committee's drought plan. Like the Big Hole plan, the Jefferson plan asks for everyone to "share the shortage." The plan is based on flow levels measured at the USGS stream gage near Twin Bridges and a stream gage installed near the Waterloo Bridge by DNRC's Water Measurement

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MONTANA WATER RIGHTS AND YOU

By Kim Overcast

In December 1999, the Montana Water Court issued the Preliminary Decrees for basins 40Q – Poplar River and 40S – Missouri River below Fort Peck. Several Eastern Montana county conservation districts sponsored public meetings to help provide information on Montana's ongoing water right adjudication program and various other water related issues. The meetings were held in Wolf Point, Culbertson, and Sidney.

Montana's Chief Water Judge, C. Bruce Loble, spoke about the adjudication process at both the Wolf Point and Culbertson meetings. All the

meetings were well attended, and many questions were answered by DNRC staff.

Topics on the agenda included a history of water rights in Montana, the operation of the Montana Water Court and the adjudication process, the

requirements for obtaining new water rights, the availability of conservation District water reserved for irrigation, maintaining current water right ownership in Montana's records, and Vision 2005 – Irrigation Development and Funding.

Following the meetings, DNRC staff assisted numerous water users with questions on their individual water rights.

If you would like to discuss the possibility of having a similar meeting in your area, contact your local conservation district office or Water Resources Regional Office.



Water Rights and You Workshop - Photo by Kim Overcast

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Program. Water-temperature monitoring stations have also been installed in the critical river reach.

The Jefferson Drought Management Plan is a work-in-progress. Details are still under discussion. We are currently monitoring the river in anticipation of implementing the plan very soon and gathering data to further refine the plan. The goal for this year is to maintain enough instream flow to avoid a fish population crash like the one brought on by the 1994 drought.

For the fourth year, the Water Measurement Program is assisting irrigators in the upper Jefferson Valley to measure their diversions. This includes the installation and rating of measuring devices so that irrigators can monitor their own diversions. It is a voluntary effort that provides

important information to irrigators, especially in dry years such as this.

The Water Measurement Program is also studying canals in order to determine seepage losses and, with assistance from the Jefferson Valley Conservation District, has obtained a portable flow meter available for irrigators to measure their own diversions.

Dave Amman is a hydrologist and is the program manager of the DNRC Water Measurement Program.

Water Lines Now Available on Web!

Water Lines can now be accessed on the Web at:
www.dnrc.state.mt.us/wrd/newsletters.htm
We will be developing an e-mail address list to notify readers when the newest issue of Water Lines has been posted on the Web.

If you prefer to be on our e-mail notification list, rather than our mailing list, please send your e-mail address with a message stating you would like to be notified to: cforgey@state.mt.us.

Embankment and Alluvial Dike Completed at Tongue River Reservoir

By Jim Domino

Work was completed on an embankment and alluvial dike at Tongue River Reservoir on May 15. The 1,200-foot long structure was constructed to reduce sub-surface water seepage into the North Decker coal mines. The increased water seepage was the result of the Tongue River Dam Rehabilitation Project, which raised the reservoir level four feet.

The dike is functioning as planned and has reduced by two thirds the sub-surface seepage into the North Decker mines. Last spring, as the reservoir was filling, water seepage increased to 18,000 gallons per minute and created a public safety hazard due to severe headcutting that occurred at the east end of the open coal pit. The water seepage far exceeded the anticipated flow rates and was beyond the water pumping resources of Decker Coal. With the dike in place, seepage has been reduced to approximately 6,000 gallons per minute, within Decker's pumping capabilities.

Included in the project were the placement of several vegetative bundles and the construction of riprap barbs along the face of the dike to provide additional fisheries habitat.

The presence of a great horned owl nest just outside of the dike construction zone presented an additional challenge to State Water Projects Bureau staff and Decker work crews. The U.S. Fish and Wildlife Service indicated that disturbance of the owl nest could constitute a violation of the Migratory Bird Treaty Act. The Northern Cheyenne Tribe also expressed concern due to the owl's religious significance. In order to



Decker Dike looking southeast - Photo by Art Taylor

prevent any disturbance, construction activity was kept to a minimum near the nest. In addition, the cut-and-fill activity was planned to move progressively toward the nest location. This was done to allow the owls to become accustomed to the increased activity.

The owls were monitored daily by State Water Projects Bureau staff throughout the duration of the project, with no disruption occurring. Bob Clark, John Sanders, and Art Taylor were on-site during the construction process to ensure that work was completed per specifications and drawings.

The total cost of the dike was \$238,963, plus Decker's cost for surveying and testing. This was nearly \$62,000 lower than originally estimated. The cost will be shared between the Tongue River Project sponsors. Decker Coal Company used its own equipment and crews to construct the dike, which will remain in place until mining activity in this area ends in approximately ten years.

Jim Domino is an environmental impact specialist with the State Water Projects Bureau

MONTANA WATER TRIVIA

What river is the longest free-flowing river in the United States?

Answer: The Yellowstone River

STATUS OF MONTANA'S STATEWIDE ADJUDICATION

By Rita Nason

On December 29, 1999, the Montana Water Court entered its Preliminary Decrees for the Poplar River Basin (40Q) and the Missouri River below Fort Peck Dam Basin (40S). Over 2,800 water right owners in these basins were sent a notice of entry of the preliminary decrees and notice of their availability. The entire decree, including abstracts of all existing water right claims filed in these two basins, is available at the Montana Water Court, the DNRC Water Resources Regional Offices in Havre and Glasgow, the DNRC Central Office in Helena, or through the internet at www.dnrc.state.mt.us/wrd/home.htm. The deadline for filing an objection has been extended to August 25, 2000, for Basin 40S and September 25, 2000, for Basin 40Q. Objection forms can be obtained from the preceding locations.

The Montana Water Court entered its Preliminary Decree for the Rocky Boy's Compact on April 27, 2000. Notice of the entry and of availability of the decree, along with a summary of the compact, were sent to over 4,000 water right owners in the Big Sandy Creek Basin (40H), the Willow Creek Basin (41N), the Marias River Basin (41P), and the Milk River between Fresno Reservoir and Dodson Creek Subbasin (40JW). Objections to the Rocky Boy's Compact must be filed by October 24, 2000.

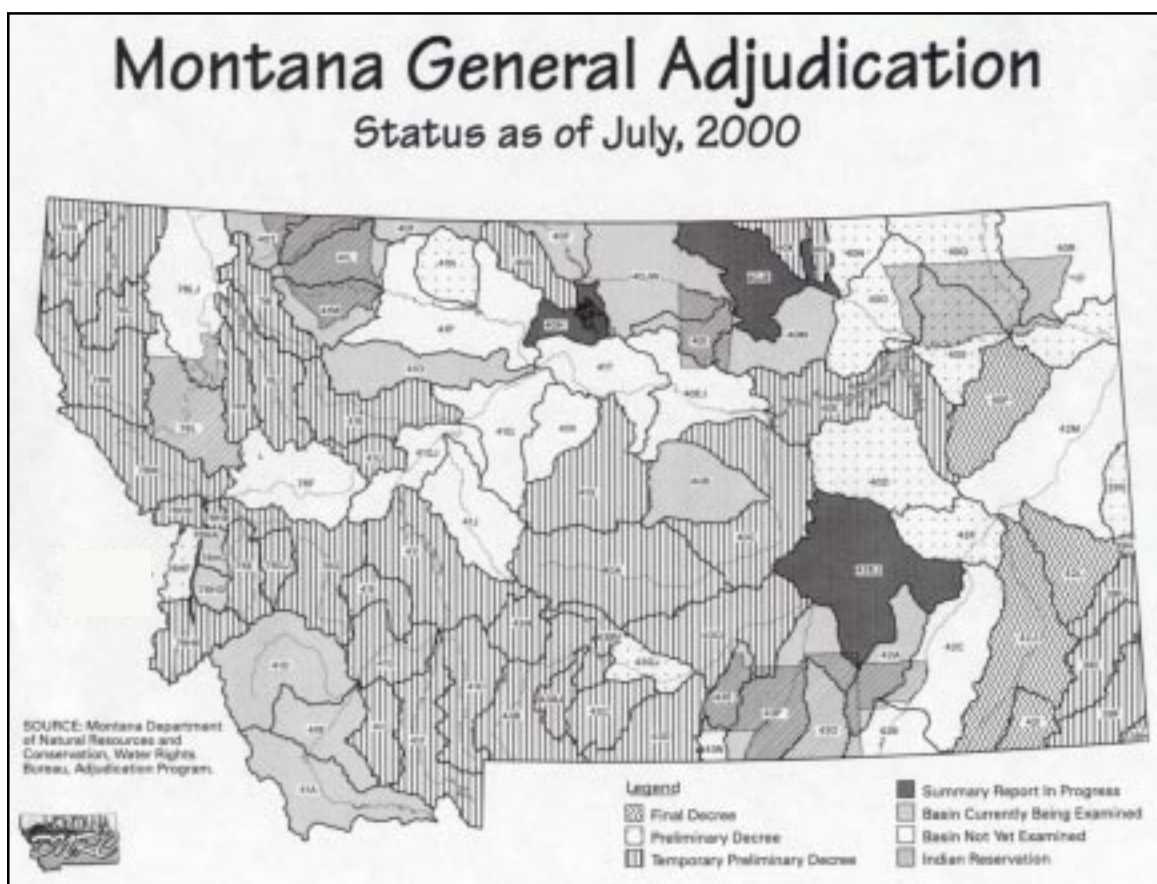
Late objections will not be accepted by the Water Court. The Water Court held public meetings on July 11, 2000, in Shelby and on July 12, 2000, in Rocky Boy's Agency and Havre. Bruce Loble, Chief Water Judge, was

present to discuss Water Court procedures, and representatives from the State, the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States, and HKM were present to explain the Rocky Boy's Compact.

As part of the Fort Belknap reserved water right negotiations, the Water Court sent a notice to all water right owners in the Peoples Creek Basin (40I). The notice was of a pre-trial conference to be held in Chinoook on July 13, 2000, to discuss the adoption of special procedures and the appointment of a special water master to facilitate the settlement of irrigation claims filed in the Peoples Creek Basin. Following the pretrial conference, the Water Court issued an Order granting motion for adopt-


existing water rights in the Yellowstone River between the Tongue River and Powder River Basins (42KJ). The next step in the adjudication process is the preparation of DNRC's Summary Report to the Water Court. This process began in March of this year, and the DNRC anticipates completion of the report by the end of the year.

The DNRC will soon begin preparation of its Summary Report for the Big Sandy Creek Basin (40H). DNRC's examination of claims is proceeding in three basins around the state: the Eastside and Mainstem of the Bitterroot River Basin (76HA) is 44% complete; the Teton River Basin (41O) is 24% complete; and the Big Horn River below Greybull River Basin (43P) is 10% complete. The



ing special procedures and has appointed Kathryn L. W. Lambert as the Special Water Master.

The Billings Water Resources Regional Office completed its examination of the 4,775 claims to

DNRC is also re-examining irrigation claims in two basins: the Big Hole River Basin (41D) is 53% complete; and the Judith River Basin (41S) is 75% complete. 

HOLLY FRANZ - A LAWYER'S PERSPECTIVE



By Cindy Forgey *Holly Franz*

Holly Franz was raised in Billings, Montana. She attended Montana State University and the University of Montana law school, graduating with high honors. Holly was admitted to the Montana State Bar and U.S. District Court in 1986. She began working with the Helena law firm of Gough, Shanahan, Johnson, and Waterman, where she is a partner and represents clients on water right matters. Her clients include irrigators, power companies, municipalities, homeowners, mining companies, and anyone else with a water or ditch problem. Holly also lobbies the legislature on water right issues and acts as a mediator in water disputes.

Holly is currently the president of the Montana Water Resources Association. Other associations she's been involved with are the First Judicial District Bar Association, State Bar of Montana (Natural Resources Section, Women's Law Section, Board of Directors, Past President, and Past Treasurer), American Bar Association (Section on Natural Resources, Energy, and Environmental Law and Water

Resources Committee Vice Chair), and Rocky Mountain Mineral Law Foundation.

Holly feels that the most challenging water quality issue facing Montana's today is compliance with the Total Maximum Daily Load (TMDL) law. As a result of Montana's law, recent lawsuits, and EPA's regulations, Montana has a fairly short time period in which to come into compliance. In light of the many listed streams and elusive nature of nonpoint pollution, it will be hard to satisfy the deadlines. She believes that Montana has approached this issue correctly by relying on voluntary measures. Many of the changes in management, that will be necessary to satisfy the law can come about only through cooperation of the landowners. While in the long run voluntary efforts may result in positive actions that cannot be forced through legal means, voluntary efforts take time, and we may not have enough time to get the job done.

The number one water quantity issue facing Montanans this year is drought. Drought emphasizes the water availability problems that generally face our state. In most years there is not enough water for everyone, but in drought years there is not enough water for anyone. Drought emphasizes the fact that, without any diversions from the stream, nature does not provide enough water for our needs. The true challenge to water management is how to deal with drought. While our legal system provides that first in time is first in right, during drought we often see a sharing of water to try to provide a little for everyone, including fish.

When asked about the most challenging water-related issue facing Montana in the next ten

years, Holly said that she believes the demands for water will continue to increase. With existing water rights allocated for diversionary uses and for instream flows, most of our streams are fully appropriated. This has resulted in the closure of many basins in Montana.

Basin closures make water rights harder to obtain and more valuable. As water becomes more valuable, she believes we will see a greater emphasis on the enforcement of water right priorities. While many smaller streams have had water commissioners for years, the majority of Montana water users are not used to senior water users enforcing their priority dates. The Water Court has completed temporary preliminary decrees in many basins, making the appointment of a water commissioner possible for the first time on previously unadjudicated streams.

The drought this year is causing many water users to look at enforcing temporary preliminary decrees. As these decrees are enforced, problems will arise. In some cases, no one objected to water right claims that are clearly at error. Montanans will be challenged as they adjust to stricter enforcement of water right priorities and as they struggle with inaccuracies in decrees due largely to lack of objections to improperly claimed water rights. 🌱

GOVERNOR PRESENTS AWARDS FOR WATERSHED STEWARDSHIP

By Cindy Forgey

Three organizations received this year's Montana Watershed Stewardship Awards: Careless Creek Watershed Project, Green Mountain Conservation District, and the Sage Creek Watershed Alliance. These organizations received the 2000 Montana Awards for Watershed Stewardship from the Montana Watershed Coordinating Council (MWCC) at a July 26 ceremony in Helena with Governor Racicot. The awards recognize innovative, locally led approaches to restoring and enhancing Montana's watersheds. The recipients of the 2000 award demonstrated measurable results; diverse, local involvement and effective collaboration; community outreach and education; and a comprehensive approach to watershed health.

The Careless Creek Project was exceptional for many reasons, but particularly for the project's long-standing service to area resources and landowners (since 1992). Careless Creek demonstrated an over all effectiveness in reducing sediment to the

Musselshell River by 25 percent. The implementation of a collaborative partnership among landowners and agencies includes an effective monitoring program and comprehensive education and outreach program.

The Green Mountain Conservation District was recognized as a catalyst and supporter of six watershed councils in the Lower Clark Fork Watershed since 1995. These six watershed councils demonstrate a comprehensive approach for watershed health, relying on a "stakeholder" process for forming councils. The success of the groups has relied on technical assistance guiding restoration and conservation efforts, as well as local citizens identifying watershed concerns and formulating effective strategies to address these concerns.

The Sage Creek Watershed Alliance has proven to be an effective force through a person-to-person approach. The alliance has addressed serious water quality concerns in northern Montana by establishing clear objectives through an area-wide Conservation Plan and

Water Restoration Action Strategy. These goals were pursued through an aggressive, comprehensive public outreach program.

The Montana Watershed Coordination Council (MWCC) is a statewide information and support network. The council serves as a forum that assists local watershed groups and helps enhance, conserve, and protect natural resources to sustain the high quality of life in Montana for present and future generations. The council encourages local people to take a proactive, collaborative approach to address natural resource issues and concerns. The MWCC also recognized the Upper Tenmile Watershed Steering Group, the Upper Shields Watershed Association, and the Big Otter Project for their local watershed efforts.

If you would like to know about the Council, or would like to find out more about the award recipients, you can access the website at

<http://water.montana.edu>

CONGRATULATIONS!



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